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Partnerships and the Roles Stakeholders Play in the Michigan Child Support IV-D Program!

By State Court Administrative Office/Friend of the Court Bureau

Michigan's Child Support IV-D Program is a cooperative effort between the executive and judicial branches of government. In Michigan, the Office of Child Support (OCS), the State Court Administrative Office (SCAO), the Friends of the Court (FOCs), and the Prosecuting Attorneys (PAs) have committed to a partnership that will lead to efforts for improving all areas of the IV-D program. Key areas of concentration will be:

- Child Support Enforcement.
- Case Management.
- Case Establishment.
- Document Generation.
- Financial Management.
- Communications.
- Contracts.
- Customer Service.
- Training and Development.

Stakeholders will be working closely together to resolve issues and review policies for the IV-D program. However, each stakeholder has responsibilities for the program as defined by statutes and separation of powers principles. Stakeholders may be asked to review all policies. Specific stakeholders will be accountable for changes in policy related to their responsibilities.

At the state level, SCAO and OCS are responsible for developing policy for the child support program. SCAO also develops policy for the operations in local FOC offices and policy for the enforcement and investigation of custody, parenting time, and child support. SCAO is the best resource for responding to FOC administrative questions, court rules, or other court policy related issues. SCAO is responsible for supervision of the administration of trial courts under the direction of the Supreme Court (MCR 8.103).

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OCS is responsible for the operation of the IV-D program and policy related issues. OCS is the best resource for responding to federal policy questions, federal compliance issues, tax-offset, parent locate, FIA child support specialist functions, and cooperative reimbursement agreement issues. OCS is responsible for operating the State Disbursement Unit (SDU) and the Michigan Child Support Enforcement Computer System (MICES). OCS's statutory authority is outlined in MCL 400. 231.

At the local level, FOCs and PAs carry out the responsibilities of the statutes and court rules. FOCs are responsible for performing statutory duties which include investigating and enforcing court orders for custody, parenting time, and child support. FOCs also provide mediation. FOCs perform their duties under the general supervision of the chief judge of the circuit court in the county in which they are located. FOCs perform additional duties pursuant to their court's contract with OCS.

PAs are responsible for securing court orders under the Paternity Act, Family Support Act, Emancipation of Minors Act, and the Uniform Interstate Family Support Act. PAs perform these duties pursuant to their contracts with OCS. PAs, FOCs, and their staffs bring valuable front-line experience to the policy development process, while introducing an important local perspective.

The partnership will use a decision-making process referred to as Work Improvement Teams (WIT) whereby perspectives from all areas of the child support program will be considered when forming policies and procedures. Issues will be identified that may not have been considered, duplication of policies will be avoided, and the collective decision-making process will provide expertise that may not otherwise have been available.

With renewed emphasis placed on cooperation and communication, we anticipate that significant improvements in Michigan's Child Support IV-D Program will be made.

2004 Access and Visitation Grants

By State Court Administrative Office/Friend of the Court Bureau

The Personal Responsibility and Work Reconciliation Act of 1996 authorized the Federal Office of Child Support Enforcement to award grants to states to direct and administer programs that support and facilitate parenting time.

The State Court Administrative Office has applied for Access and Visitation Funds for FY 2004. If awarded, funds will be distributed through an application process to friend of the court offices in Michigan for activities that support and facilitate parenting time and custody on a local or regional basis. Activities that are eligible for funding include, but are not limited to, mediation, counseling, education, development of parenting time plans, parenting time enforcement, and development of guidelines for parenting time and alternative custody arrangements. A condition of the grant requires all grant recipients to provide 10 percent matching funds and to provide status reports on the program's success.

The State Court Administrative Office has recently distributed the 2004 Access and Visitation Grant Application and Instructions. The following are important dates for those friend of the court offices who intend to apply for a grant:

- All grant applications must be received by **August 15, 2003**, in order to be reviewed by the selection committee. (If funds remain after the selection committee makes its determination, the committee will be allowed to review applications received after **August 15, 2003**.)
- Applications will be reviewed by the selection committee on **August 22, 2003**.
- Notifications of grant awards will be completed by **August 29, 2003**.
- All grant money must be spent between **October 1, 2003**, and **September 30, 2004**.
- If a grant is awarded to a friend of the court office, the final financial report must be submitted to the SCAO by **October 5, 2003**.

Participation in the application process is voluntary. All friend of the court offices that apply must adhere to the program criteria that are provided in the application. The grant application instructions include a comprehensive outline of the program requirements and criteria used for evaluating the proposals.

The selection committee is made up of individuals chosen from the friends of the court, who are not grant applicants, the SCAO, the Michigan Judicial Institute, and the Office of Child Support.

Friends of the court who have questions regarding the Access and Visitation Grant process may contact Timothy Cole at the SCAO Friend of the Court Bureau.

"The State Court Administrative Office has applied for Access and Visitation Funds for FY 2004."

Cases in Brief

By State Court Administrative Office/Friend of the Court Bureau

In *Paulson v Paulson*, 254 Mich App 568 (2003) the Michigan Court of Appeals affirmed a Calhoun County Circuit Court decision.

Douglas John Paulson, plaintiff and Laurel Paulson, defendant, divorced in 1987. The defendant was awarded physical custody of the minor child and the plaintiff paid \$35 a week in child support. In 1990, for reasons which were unclear from the record, a stipulated order was entered which abated support, however, the plaintiff continued to voluntarily pay child support in the amount of \$65 per week, despite the abatement order.

In July 1990, the defendant qualified for Social Security Disability Benefits totaling \$1,185 per month, which included \$617 in Social Security Benefits for the minor child. The defendant also qualified for \$432 a month in disability insurance.

In April 1990, the plaintiff lost his job and in December 1992, he qualified for Social Security Disability Benefits of \$1,080 per month which he began to receive in September 1993. Plaintiff made three additional, voluntary, child support payments, totaling \$800, subsequent to qualifying for Social Security Benefits and then the payments stopped.

The defendant experienced health setbacks and, in 1996, she asked the plaintiff to resume making voluntary weekly payments of child support. The plaintiff refused. The plaintiff then filed a motion to modify or eliminate his child support obligation and the parties stipulated to a referral to the friend of the court (FOC) for a recommendation. The FOC recommended that the plaintiff pay \$47 per week in child support. The plaintiff requested a review de novo of the FOC recommendation and the trial court had an evidentiary hearing. Both parties agreed that the essential question for the trial court to determine was whether § II.D of the child support guidelines applies where both parties receive Social Security Disability Benefits.

A portion of § II.D stated:

“When children receive dependent benefits from a Social Security Retirement, Survivor’s or Disability Insurance Program based on the earnings record of the noncustodial parent, those benefits should not be considered as income to the custodial parent. However, those benefits should be considered, for the purpose of making a child support recommendation, according to the following instructions:

Step 1: Determine the noncustodial and the custodial parents’ net weekly incomes.

Step 2: Determine the normal support amount from the appropriate schedule.

Step 3: Determine the weekly amount of Social Security Benefits attributable to the noncustodial parent received by the child(ren) and subtract from the appropriate amount of support calculated based on the parent’s incomes.

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If the grant received by the child(ren) from Social Security is greater than the normal support recommendation, no additional support should be recommended. If the grant received by the child(ren) from Social Security is less than the normal support recommendation, the difference between the grant amount and the support recommendation should be made up by the support.”

Because the guidelines specifically refer to benefits “based on the earnings record of the noncustodial parent,” the defendant contended that, since the benefits to the children were based upon the custodial parent’s record, the amount received by the children should have no impact on any support amount that the plaintiff would be ordered to pay. The court noted that the minor child received more benefits under defendant’s earnings than he would have had he received benefits under the plaintiff’s earnings.

The trial court agreed that the child support guidelines did not apply to a situation where both parents of a minor child are receiving Social Security Disability Benefits. The court, nevertheless, went on to apply the support formula as if the plaintiff had qualified for the disability benefits first. The court determined that, had the plaintiff qualified to receive disability benefits before the defendant, the disability payments that the minor child would have received would have exceeded the plaintiff’s support responsibility and, therefore, no support should be ordered. The court concluded that these factors coupled with plaintiff’s substantial medical expenses, would negate granting an award of support.

The defendant appealed. The Michigan Court of Appeals affirmed the trial court decision and stated that a trial court may use its discretion to modify support as the circumstances of the parents and the benefit of the child may require, MCL 552.517. The trial court did not abuse its discretion.

The deviation in this case was not an abuse of discretion based upon the disparity of income between the parties. Mere disparity in income alone does not make application of the guidelines unjust. The court praised the trial court for reaching a result which satisfied the intent of the legislature and met the needs of the parties and the child.

The trial court provided adequate documentation of the rationale for a deviation from the child support guidelines. The Michigan Court of Appeals reviewed the reasons de novo and reached the same conclusion—that a deviation was appropriate under these circumstances.

The intent of the Legislature in requiring the use of the Michigan Child Support Formula Manual was to meet the needs of the child and to base those needs on the actual resources of each parent. Deviations from the formula are within the discretion of the court when the result would otherwise be unjust or inappropriate. *Ghidotti v Barber*, 459 Mich 189, 198, 586 NW2d 883 (1998). A deviation was warranted in this case. *Burba v Burba* (After Remand), 461 Mich 637, 647: 610 NW2d 873 (2000).

“The trial court agreed that the child support guidelines did not apply to a situation where both parents of a minor child are receiving Social Security Disability Benefits.”

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Capitol Corner

By State Court Administrative Office/Friend of the Court Bureau

Since the last publication of the Pundit in April of 2003 17 bills were introduced in the Michigan Legislature that could impact the friends of the court and courts. To view these and other bills please go to: <http://www.michiganlegislature.org/>.

House Bill 4634 was introduced on May 6, 2003 and referred to the Committee on Family and Children Services. The bill would amend the Uniform Unclaimed Property Act by creating a Children's Trustee within the Michigan Department of Treasury. The Children's Trustee would be responsible for the control and proper distribution of any escheated child support collections paid to the friend of the court or the state disbursement unit. The bill would also expand the act's definition of "intangible property" to include any money paid as child support to the friend of the court or the SDU. Under the bill, any undisbursed child support that remains unclaimed by the owner for more than a year would be presumed abandoned and would become subject to the state's custody. The Children's Trustee would utilize the Family Independence Agency's databases to identify possible payees of undisbursed child support.

House Bill 4635 was introduced on May 6, 2003 and referred to the Committee on Family and Children Services. The bill would amend the Office of Child Support Act. The bill requires the Office of Child Support to establish:

- Databases for monitoring undisbursed child support.
- Policies and procedures for monitoring caseloads, child support collections, and undisbursed child support.
- Performance standards for friend of the court offices.
- An undisbursed child support reduction team to assist friend of the court offices.
- A training program for friend of the court offices and the Michigan State Disbursement Unit for reducing the amount of undisbursed child support.
- Develop a system of communication for public agencies to ensure a more timely disbursement of child support.
- A report to the legislature on the progress to reduce undisbursed child support.
- The promotion of direct deposits.
- A report to the Michigan Legislature regarding undisbursed child support amounts.

House Bill 4636 was introduced on May 6, 2003 and referred to the Committee on Family and Children Services. The bill would create the Child Support Assurance Project Act. Under the bill, the Children's Trustee would be responsible for the Undisbursed Child Support Fund. Monies from the fund would be sent to families who are eligible. Among the criteria to receive monies from the fund:

- The child's custodial parent has not received a court-ordered child support payment within the six months before applying.

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- The child has an employed eligible custodian or unemployed disabled eligible custodian.
- Paternity has been established.
- There is a court order for child support.
- There is a household income less than 200 percent of the federal poverty guidelines.

The bill also requires the Office of Child Support and the friends of the court to work closely with the Children's Trustee to develop policies and procedures for the Child Support Assurance Project.

House Bill 4650 was introduced on May 7, 2003 and referred to the Committee on Judiciary. The bill amends the Support and Parenting Time Enforcement Act. The bill allows the court to retroactively correct a child support obligation. Note: House Bill 4650 is tie bar to House Bill 4120. House Bill 4120 would allow an individual, who has been ordered to pay child support, to file a motion asking for the child, mother, and father to submit to genetic tests. If the tests excluded the man as the father, the court would be required to terminate the child support order.

House Bill 4654 was introduced on May 7, 2003 and referred to the Committee on Family and Children Services. The bill would amend the Office of Child Support Act by creating an amnesty program whereby waiving all criminal and civil penalties, for a period of not less than 30 days and not more than 60 days and ending before February 1, 2004. Under the bill, the child support payer would have to submit a written request for a waiver, and payment of either a lump sum or installments equal to 50 percent of the outstanding past due child support for the first payment, followed by two equal installment payments to pay off the past due child support.

House Bill 4768 was passed by the House on July 2, 2003. The bill would amend the Paternity Act by requiring both parents to pay for the birthing costs based on each parent's ability to pay or any other relevant factor. Under the bill, if Medicaid paid the confinement bill, the mother would not be required to pay any of the confinement expenses.

House Bill 4769 was passed by the House on July 2, 2003. The bill would amend the Social Welfare Act. The bill provides that all rights to current, past due, and future child support payments payable for a child under the supervision of the Family Independence Agency (FIA), and for whom the FIA was making state or federally funded foster care maintenance payments, would be assigned to the FIA while the child was receiving or benefiting from those payments. When the FIA ceased making foster care maintenance payments, any past due support accrued under the assignments would remain assigned to the FIA, and the assignment of current and future support rights to the FIA would stop.

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House Bill 4770 was passed by the House on July 2, 2003. The bill would amend the Office of Child Support Act by creating within the State Treasury the Child Support Bench Warrant Enforcement Fund. The fund would be used to administer and provide grants for activities to enforce bench warrants associated with the collection of child support.

House Bill 4771 was passed by the House on July 2, 2003. The bill would amend the Revised Judicature Act. The bill would increase the judgment entry fees by \$10.00 to \$40.00 for uncontested domestic relations cases, to \$60.00 when mediation was provided, and to \$80.00 when an evaluation was conducted. The bill would extend the judgment entry fees to all domestic relations cases in which custody, parenting time, or child support for a minor child is determined by the court. Ten dollars of the fee would be placed in the Bench Warrant Enforcement Fund. Under the bill, if a fee is waived or suspended, the court may require by order in the final judgment that one or more parties to the case pay the fee. The bill also prohibits for a motion fee to be collected for a request for hearing to contest income withholding.

House Bill 4772 was passed by the House on July 2, 2003. The bill would amend the Support and Parenting Time Enforcement Act. The bill would require the friend of the court to send a notice of arrearage to a payer if an income withholding is not immediately effective and requires enforcement, or the amount of the withholding is going to be administratively adjusted. The payer would have 21 days to submit an objection and request a hearing to the income withholding or the administrative adjustment of the income withholding. Under the bill, the payer would be required to file a motion with the county clerk's office if that individual wanted to object to income withholding or administrative adjustment. The bill would also allow the court to find a payer in contempt, if the individual failed to participate in a work activity after a referral was made by the friend of the court. Upon finding a payer in contempt, the court must order the payer to participate in a work activity, absent good cause to the contrary.

House Bill 4773 was passed by the House on July 2, 2003. The bill would amend the Friend of the Court Act by permitting a party to a domestic relations case to request a child support review once every 36 months. The bill would also require the friend of the court to review child support cases once every 36 months if state assistance is contributing towards the support of the child. The bill also creates an administrative process for child support reviews by the friend of the court. The bill considers a period of incarceration of one year or release from incarceration as a change of circumstances that would require the friend of the court to review the child support obligation.

House Bill 4774 was passed by the House on July 2, 2003. The bill would amend the Support and Parenting Time Enforcement Act by eliminating the compounding of the

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8 percent surcharge that is applied to child support arrears. The bill permits child support payers to file a motion with the court requesting a discharge of the surcharge and a repayment plan.

House Bill 4775 was passed by the House on July 2, 2003. The bill would amend the Paternity Act by allowing the child support obligation to be ordered only from the date the paternity complaint was filed. The bill would permit the court to order support retroactive to the birth of the child if one or both of the following were true: 1) The defendant was avoiding service of process; 2) the defendant threatened or coerced through domestic violence or other means the complainant not to file a proceeding.

House Bill 4776 was passed by the House on July 2, 2003. The bill would amend the Friend of the Court Act by defining “de novo hearing” as a hearing that is based on the record of a previous hearing or the record supplemented by testimony or evidence that was not introduced at the referee hearing. The bill requires the Michigan Child Support Formula Manual to include guidelines for deviation.

House Bill 4785 was introduced on May 28, 2003. The bill would amend the Office of Child Support Act by establishing criteria that must be stated on the tax offset notices that are sent to child support payers. The bill also establishes arrearage thresholds for tax intercepts to be requested.

House Bill 4792 was passed on July 2, 2003. The bill would amend the Support and Parenting Time Enforcement Act by permitting child support payers to file a motion asking the court to establish a repayment plan, dismissing arrears, or abating arrears. Certain conditions would first have to be met before the court could take action. The court could only approve a payment plan after both the parties have been served with a notice, a hearing was held, and the payee consented to the entry of the order.

Senate Bill 485 was passed by the Senate, and referred to the House Committee on Family and Children Services June 12, 2003. The bill would amend the Support and Parenting Time Enforcement Act by establishing that the annual surcharge that is assessed against past due child support be calculated at a rate equal to the adjusted prime rate determined by the Michigan Department of Treasury.

FYI

Reports Due

Grievance Reports: Grievance reports for January through June of 2003 were to be completed and sent to the Friend of the Court Bureau before July 15, 2003. Grievance records for 2003 must be submitted to the Bureau electronically by e-mail or disk. This data is used in the report to the legislature, and those offices not reporting will be listed as “failed to report.”

Annual Statutory Reviews: Annual Statutory Reviews including any responses and a summary of public comments must be submitted to the State Court Administrative Office, Friend of the Court Bureau, by August 1, 2003. Forms are available at: <http://courts.michigan.gov/scao/courtforms/domesticrelations/drindex.htm#foc>.

Non-Custodial Parent Work First Program: Reports for the Non-Custodial Parent Work First Program were to be submitted to the State Court Administrative Office by July 15, 2003.

Brochures

Understanding Child Support Disbursement: Recently the Friend of the Court Bureau updated the brochure, “Understanding Child Support Disbursement.” The brochure can be found at: <http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa30.pdf>.

This brochure provides information about distribution and assignment rules. The Friend of the Court Bureau will be updating and creating new brochures, about custody, parenting time, and child support. The brochures will be placed on the State Court Administrative Office’s website in the coming months.
